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Case No. 84-571

SUPREME COURT OF THE UNITED STATES

October Term 1984

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HARRY N. WALTERS, Administrator of the
Veterans Administration, et al.,

Appellants,

vs.

NATIONAL ASSOCIATION OF RADIATION
SURVIVORS, a California non-profit
corporation, et al.,

Appellees,

and THE AMERICAN G.I. FORUM, a National
non-profit corporation,

Intervenor-Appellee.

On Direct Appeal from

The United States District Court for
The Northern District of California

Amicus Curiae Brief of Andrew Groza
In Support of Appellee

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Amicus Curiae Brief of ANDREW GROZA
In Support of Appellee

INTEREST OF AMICUS CURIAE

Amicus curiae, Andrew Groza, is a
veteran of World War II within the mean-
ing of 38 U.S.C. § 101(2) & (8), by vir-
tue of active military service from June
19, 1943 to July 8, 1944,

Appellant found that he had a disa-

bility based on a heart condition, but that it was not service connected.

Amicus Curiae brought a suit in the United States District Court for the Eastern District of California, Groza v. The Veterans' Administrator, et al., # Civ. S-82-679-MLS, alleging, inter alia, that the decision was arbitrary and capricious, not supported by the evidence, active concealment of military records and challenging the Constitutionality of 38 U.S.C. § 211(a) and § 3404(c). Defendants brought motions on the pleadings which were granted and the action dismissed with prejudice. Amicus curiae appealed. United States Court of Appeals, Ninth Circuit, No. 84-1783. That case was heard on oral argument on December 14, 1984, and is now pending.

The decision of this court may be determinative as to the constitutionality of 38 U.S.C. § 3404(c).

SUMMARY OF ARGUMENT

1. Stare decisis does not control constitutional issues; widespread practice cannot shield conduct from scrutiny; decisions in this court are sparse, and in one case without opinion; this court should re-examine the matter.

2. The constitution is construed as other legal instruments; each word and phrase must be given meaning; meaning is derived from the intent of framers; where two meanings are possible, the one which gives effect to the provision is preferred over one which would defeat the purpose of the provision.

3. Veterans have a First Amendment Right to petition for the redress of grievances which can be traced back to rights found in the magna charta, and includes the right to defend their property interest in a pension.

4. Section 3404(c) is in violation

of a right constitutionally delegated to the Veteran; it impermissibly impairs 1st Amendment Rights; it violates equal protection of the laws; the government has an unfair advantage because it has a lawyer; the United States Attorney cannot represent two parties; the government can show no compelling justification for the restriction in light of the experience of other agencies.

Conclusion. Based upon the foregoing, this court should affirm National Radiation Survivors v. Walters, United States District Court for the Northern District of California, # C-83-1861-MHP, and remand for further proceedings.

ARGUMENT

I

STARE DECISIS IS NOT CONTROLLING

Neither the doctrine of collateral estoppel nor stare decisis, has been an absolute bar to litigating constitution-

al issues affecting broad, important social issues. Generally, United States v. Mendoza, --- U.S. ---, 104 S.Ct. 568, 574, 78 L.Ed.2d 379, 386-387 (1984). This Court has recognized that even longstanding widespread practice is not immune from scrutiny. E.g., Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1983) (Finding warrantless arrests in a home unconstitutional notwithstanding practice in 23 states).

Gendron v. Levi, 423 U.S. 802, 96 S.Ct. 9, 46 L.Ed.2d 23 (1975) is the last case on this issue in this Court and it was a per curiam decision without opinion affirming an appeal on a challenge to 38 U.S.C. § 3404(c). However, this court has cautioned that per curiam decisions are often no more than decisions on the facts and ought not to be considered binding on lower courts in the absence of an opinion.

Tyler v. Campbell, 106 U.S. 322, 1 S.Ct. 293, 27 L.Ed. 162; Barton v. Geiler, 108 U.S. 161, 2 S.Ct. 387, 27 L.Ed. 687.

This Court has never held 38 U.S.C. § 211(a) constitutional.¹ In Lynch v. United States, 292 U.S. 571, 54 S.Ct. 840, 78 L.Ed. 1434 (1934) this court only found, in obiter dicta, that it was not relevant to the issues presented.

Therefore, the issue before the court is ripe for re-examination on the basis of the historical guarantees and protections afforded by the constitution, giving weight to the intent of the framers and the source of our liberties as defined and expounded in the Magna Charta of 1215.

II

STANDARDS OF CONSTITUTIONAL CONSTRUCTION

In the solution of constitutional questions the same rule of interpreta-

tion, and sources of judicial information, may be resorted to as in the construction of statutes and other instruments granting power. Adams v. Storey, 1 Paine (U.S.) 79, 1 Fed. Cas. page 141, 145 (1817). The constitution and the law are to be expounded without leaning one way or the other, according to those general principles which usually govern the construction of fundamental or other laws. Bank of the United States v. Deveaux, 5 Cranch (9 U.S.) 61, 85, 3 L.Ed. 38 (1809). No word or clause can be rejected as superfluous or unmeaning, but each must be given its due force and appropriate meaning. Wright v. United States, 302 U.S. 583, 588, 58 S.Ct. 395, 82 L.Ed. 439 (1938). Words and terms are to be taken in the sense they were used and understood at common law and at the time the constitution and the amendments were adopted. Veazie Bank v. Fenno, 8

Wall (75 U.S.) 533, 542, 19 L.Ed.482 (1869); Locke v. New Orleans, 4 Wall (71 U.S.) 172, 18 L.Ed. 334 (1866); Gibbons v. Ogden, 9 Weat. (22 U.S.) 1, 188-189, 6 L.Ed. 23 (1824); United States v. Harris, 1 Abb. (U.S.) 110, 26 Fed. Ca. No. 15, 312 (1866); United States v. Block, 4 Sawy. (U.S.) 211, 24 Fed.Cas. 14,609 (1877); Pardoning Power of the President, 5 Opinion U.S. Atty. Gen. 532, 535 (1852). Where there are several possible meanings of the words of the constitution, that meaning which will defeat rather than effectuate the constitutional purpose cannot rightly be preferred. United States v. Classic, 313 U.S. 299, 316, 61 S.Ct. 1031, 85 L.Ed. 1368.

III

VETERANS' HAVE A FIRST AMENDMENT RIGHT TO REDRESS GRIEVANCES

1st Amendment rights have always been recognized as embracing the right

of access to administrative agencies and demand for an exercise by the government of its powers in furtherance of the interest and prosperity of the petitioner. Eastern R.R. Presidents Conf. v. Noerr Motors Freight, 365 U.S. 127, 137, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961); California Motor Trans. Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972); NAA-CP v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963); Brotherhood of R.T. v. Virginia, 377 U.S. 1, 5-7, 94 S.Ct. 1113, 12 L.Ed.2d 89, 11 A.L.R.3d 1196 (1964). Generally, Johnson v. Robinson, 415 U.S. 361, 366fn.8, 94 S.Ct. 1160, 39 L.Ed.2d 389 (1974); Hernandez v. Veterans Administration, 45 U.S. 391, 94 S.Ct. 1177, 39 L.Ed.2d 412 (1974).

Veterans' Rights were expressly recognized in the Magna Charter of 1215,² to include benefit rights. Magna Charta, Article 2 (Benefits), appendix

p. 6; Art. 16 (Excessive Service), appendix p. 10; Art. 61 (Right of Review), appendix, p. 20. The Magna Charter is recognized as the antecedent of 1st Amendment Rights. U.S. Senate Document # 92-82 (1974) The Constitution of the United States of America; Analysis and Interpretation, page 1030ff.

The pension scheme enacted is not a mere gratuity, but the just compensation for the permanent taking of a veteran's ability to work which the 5th and 13th Amendment demands, and is constructively a form of worker's compensation. E.g., 5 U.S.C. § 8501, et seq; 22 U.S.C. § 801 et seq.; 42 U.S.C. § 401, et seq., § 1651, et seq and 1751, et seq.

Given the foregoing 1st Amendment and Magna Charta history, Veterans have a right to judicial review of decisions affecting their pensions.

IV

38 U.S.C. § 3404(c) IMPERMISSIBLY INHIBITS A VETERAN'S CHOICE OF COUNSEL

The United States Constitution provides in relevant part:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

9th Amendment. And,

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

10th Amendment.

The Constitution does not delegate to the national government the right to determine who may or may not have counsel. Indeed, the right to retain counsel has been expressly reserved to the accused in criminal prosecutions. 6th Amendment. Reading the 9th and 10th Amendments in pari materia, the right to retain counsel of one's own choice remains

with the People,³ unless the Government can show a compelling justification for the curtailment. Generally, NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).⁴

While this court has never required the appointment of counsel in administrative hearings, it has held that the right to retain counsel in an administrative hearing is an important and necessary right in protecting legitimate claims against the government. Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). Stated otherwise, any impediment to the acquisition of counsel would unduly restrict 1st Amendment Rights. In the context of the case at bench, § 3404(c) unduly restricts a Veteran's exercise of 1st Amendment Right to redress grievances predicated on denial of pension rights that he may have, and is therefore unconstitutional.

Alternatively and cumulatively, there is implied in the due process clause of the 5th Amendment a right to equal protection of the law (Johnson, supra, 415 U.S., at 364fn4).

In Goldberg v. Kelly, *supra*, 397 U.S. at 269-270, 90 S.Ct. 1011, 25 L.-Ed.2d 287 this Court rejected the notion that mere desire to protect the public purse was sufficient to override the individuals need for due process of law and the Assistance of Counsel in Social Security Cases. Social Security Cases have required the assistance of counsel with reasonable compensation ever since with no apparent ill effects. 20 CFR 404.975 and .976 (1979). That Veterans who have defended the very concept of due process should have less rights than those accorded welfare recipients whose benefits are unrelated to service in defense of their country smacks of a

denial of equal protection of the laws (Johnson, supra, 415 U.S., at 364fn4), or denial of due process of law for not being rationally related to furthering a legitimate governmental object, vis securing a just result free from arbitrary and capricious decision making. Johnson, supra, 415 U.S., at 374-375.

Moreover, the practice is offensive to procedural notions of a fair hearing guaranteed under the 5th Amendment. The Administrator has the right to Counsel, and may refer questions of law to his legal advisor. 38 U.S.C. § 211(b).

It is, therefore, unfair to restrict compensation in a manner which prevents a Veteran from retaining counsel of his own because it is most certain that on questions of law, the Administrator will give greater weight to the opinion of a trained lawyer before he listens to a Veteran untrained in

law and unaided by counsel, thus relegating him to the acceptance of whatever opinions adverse counsel has. Such a system is inherently unfair in violation of the 5th Amendment due process clause.

Moreover, the Attorney General cannot effectively, or ethically, represent both parties. All lawyers have a duty of loyalty. American Bar Association, Code of Professional Responsibility [ABA, CPR] DR 5-101 to DR 5-107. E.g., General Motors Corp v. City of New York, 501 F.2d 639 (2nd Cir., 1974); United States v. Standard Oil Co., 136 F. Supp. 345 (S.D.N.Y., 1955). ABA, CPR, DR 9-101(A); DR 9-101(C). See, 18 U.S.C. §§ 201-218 (federal anti-conflict of interest law).

The need for legal assistance cannot be overstated. Appellants do not make a factual showing that medical personnel are not used as a part of the decision making process as alleged by

Amicus Curiae in the Courts below.

A fundamental rule of administrative agency law is that an administrative agency must confine itself to the record before it and afford an opportunity to make a showing contrary to which judicial notice has been taken. 5 U.S.C. § 1006(d). N.L.R.B. v. Johnson, 310 F.2d 550 (6th Cir., 1962); United States v. Pierce Freight Lines, 327 U.S. 515, 66 S.Ct. 687, 90 L.Ed. 821; Universal Camera Corp., v. N.L.R.B., 340 U.S. 474, 71 S.Ct. 456, 95 L.Ed. 456 (1951); Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970).

Without the assistance of counsel, it is clear that the Board, through one of its panel members, can take judicial notice of matters without affording the Veteran an opportunity to "cross-examine. Cf., Richardson v. Perales, 402 U.S. 389, 410, 91 S.Ct. 1420, 28 L.Ed.2d

842 (1971), with Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1973). It is clear that an attorney can recommend, and select, where appropriate, the right expert to assist the veteran in making a record, and curtail the utilization of an expert not subject to cross-examination. Goldberg, supra, 397 U.S., at 269-270.

The chief grounds Appellants can muster in defense of § 3404(c) is that it discourages the promotion of invalid claims. Margolin v. United States, 269 U.S. 93, 46 S.Ct. 64, 70 L.Ed. 176 (1925); Hines v. Lowry, 305 U.S. 85, 59 S.Ct. 31, 83 L.Ed. 56 (1938); Hoffmaster v. V.A., 444 F.2d 192 (3rd Cir., 1971). There is no evidence that has been the experience is Social Security Cases. Moreover, attorney's have ABA and State Ethical Standards which prevent advocating frivolous claims. ABA, CPR, DR 7-

102(A)(1), (2); California Rules of Professional Responsibility, Rule 2-110(1), (2). There is no evidence that the persons chosen by Congress have ethical standards.⁵ In view of potential for conflicts of interest inherent in having office furniture provided by Appellant, lack of legal training, and no compensation, the opposite is true. And it is conceivable meritorious claims will be lost for lack of competent counsel.

Appellant would also reduce Veterans who have defended the concept of due process of law to the status of convicted felons and school children. Appellant's Brief, pp. 26 - 28. However, this court has recognized that convicted felons have a substantially reduced liberty interest protected only by the 8th Amendment. Wolff v. McDonnell, 418 U.S. 539, 569-570, 94 S.Ct. 2963, 41 L.Ed.2d 435 (1974). Therefore, denial of counsel

to convicted felons is not a legal basis for denying counsel to Veterans.

Similarly, this Court recognized that at common law, school children had substantially less due process rights than others and was unwilling to change the common law. Ingraham v. Wright, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977). At common law, Veterans had substantial due process rights regarding their pensions, supra Point III. Therefore, denial of counsel to school children is not a legal basis for denying counsel to Veterans.

A third type of case cited by Appellant, Schwiker v. McClure, 456 U.S. 188, is not about the right to counsel, but hearing officer qualifications. Hence, that case affords no legal justification for the denial of counsel.

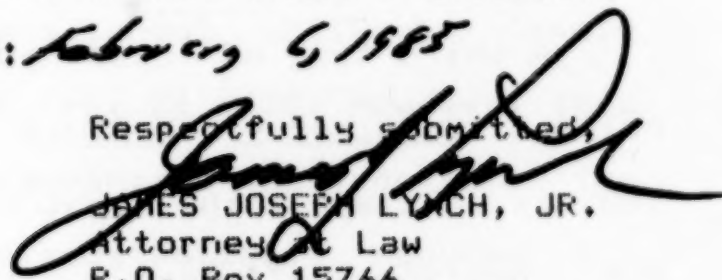
CONCLUSION

In view of the foregoing arguments,

this court should find that the restriction on compensating counsel are unconstitutional because it constitutes either a denial of rights retained by the People, an unreasonable restraint or inhibition on 1st Amendment Petition Rights, a denial of due process of law, or a denial of equal protection of the laws, that the government has not sustained its burden of proving a compelling governmental justification, affirm the decision of the District Court and remand for further proceedings not inconsistent with this Court's decision.

Dated: *February 6, 1985*

Respectfully submitted,


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In Support of Appellee

Footnotes:

1. Rosen v. Walters, 719 F.2d 1422 (9th

Cir., 1983) did not address the 1st Amendment rights to petition or trace its history first found in the Magna Carta. Holly v. United States, 352 F. Supp. 175 (S.D. Oh. 1972), affirmed without opinion 477 F.2d 600 (6th Cir.), cert. den. 414 U.S. 1023 (1973) was not a decision on the merits; the court merely refused to invoke a three judge panel as required at the time, holding at page 176 and citing a number of this Court's decisions that Congress could withhold judicial review. In fact not one single case cited by Holly supports that conclusion. Each of this Court's cited cases merely construed a Statute Congress had passed to: (1) determine whether or not congress had withheld judicial review; and, if not, (2) what that review was to be. In each case, this Court held that Congress had not foreclosed judicial review. It also cited K. Davis, Administrative Law Text, § 28.04 (see now, K. Davis Administrative Law Text 2nd). That treatise does not cite any 1st Amendment Right cases, or any case that Congress has the right to withhold judicial review, but does trace a history of this Court's retreat from a judicial philosophy of no judicial review. Finally, it is well settled that the denial of certiorari imports NO implication or inference concerning the court's views of the merits. United States v. Kras, 409 U.S. 434, 93 S.Ct. 631, 34 L.Ed.2d 621; Hughes Tool Co. v. Transworld Airlines, 409 U.S. 363, 93 S.Ct. 647, 34 L.Ed.2d 577. Generally, 2 U.S. Supreme Court Digest (L.Ed.) Appeal & Error § 910.8.

2. A true copy is set out in the appendix. Reissue Charters vary in text, however the following resources have

preserved the original text: McKechnie, William Sharpe, Magna Carta; A Commentary on the Great Charter of King John. Schwartz, Bernard, The Bill of Rights: A Documentary History, Volume 1, page 21; 14 Encyclopedia Britannica (1971), page 578; West's Annotated California Codes, Constitution, Volume 3, page 759.

3. The Preamble does not create any substantive rights, but it does define for whom the rights were created. United States vs. Boyer, 85 F. 425 (1898). It has always been recognized as reposing sovereignty in the People. Hamilton, The Federalist Papers, No. 84. Dred Scott vs. Sanford, 60 U.S. (19 How.) 404, 15 L.Ed. 691. See also, U.S. Constitution, Art. I, § 9 and § 10, abolishing nobility, and, inferentially, abolishing common law concepts of sovereignty. Farrand, Max, The Constitutional Debates, Volume 4, pages 29 - 33.

4. This Court has held that protection from deprivation of federally protected rights is the same whether the conduct involves state or federal action. Generally, Butz v. Economou, 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978).

5. It appears that Disabled American Veterans has breached a duty of loyalty to argue in its Brief that members ought not to have the right to retain counsel of their choice. There is no showing of an organizational vote. The short answer to the DAV is that retained counsel shifts advocacy costs from DAV, supported by appellant, to the Veteran only if the Veteran so chooses, and it gives the Veteran the opportunity to discover malpractice in the representation.

A.E. DICK HOWARD

MAGNA CARTA

TEXT AND COMMENTARY



PUBLISHED FOR THE MAGNA CARTA COMMISSION
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Magna Carta

Text and Commentary

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JOHN, by the grace of God, King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou: To the Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Reeves, Ministers, and all Bailiffs and others, his faithful subjects, Greeting. Know ye that in the presence of God, and for the health of Our soul, and the souls of Our ancestors and heirs, to the honor of God, and the exaltation of Holy Church, and amendment of Our kingdom, by the advice of Our reverend Fathers, Stephen, Archbishop of Canterbury, Primate of all England, and Cardinal of the Holy Roman Church; Henry, Archbishop of Dublin; William of London, Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worces-

Preamble

ter, William of Coventry, and Benedict of Rochester, Bishops; Master Pandulph, the Pope's subdeacon and familiar; Brother Aymeric, Master of the Knights of the Temple in England; and the noble persons, William Marshal, Earl of Pembroke; William, Earl of Salisbury; William, Earl of Warren; William, Earl of Arundel; Alan de Galloway, Constable of Scotland; Warin Fitz-Gerald, Peter Fitz-Herbert, Hubert de Burgh, Seneschal of Poitou, Hugh de Neville, Matthew Fitz-Herbert, Thomas Basset, Alan Basset, Philip Daubeny, Robert de Roppelay, John Marshal, John Fitz-Hugh, and others, Our liegemen:

The English Church shall be free; grant of liberties to free men of the kingdom

1 We have, in the first place, granted to God, and by this Our present Charter confirmed for Us and Our heirs forever—That the English Church shall be free and enjoy her rights in their integrity and her liberties untouched. And that We will this so to be observed appears from the fact that We of Our own free will, before the outbreak of the dissensions between Us and Our barons, granted, confirmed, and procured to be confirmed by Pope Innocent III the freedom of elections, which is considered most important and necessary to the English Church, which Charter We will both keep Ourselves and will it to be kept with good faith by Our heirs forever. We have also granted to all the free men of Our kingdom, for Us and Our heirs forever, all the liberties underwritten, to have and to hold to them and their heirs of Us and Our heirs. [pp. 20, 21]

2 If any of Our earls, barons, or others who hold of Us in chief by knight's service shall die, and at the time of his death his heir shall be of full age and owe a relief, he shall have his inheritance by ancient relief; to wit, the heir or heirs of an earl of an entire earl's barony, £100; the heir or heirs of a baron of an entire barony, £100; the heir or heirs of a knight of an entire knight's fee, 100s. at the most; and he that owes less shall give less, according to the ancient custom of fees. [p. 10]

3 If, however, any such heir shall be under age and in ward, he shall, when he comes of age, have his inheritance without relief or fine. [p. 10]

4 The guardian of the land of any heir thus under age shall take therefrom only reasonable issues, customs, and services, without destruction or waste of men or property; and if We shall have committed the wardship of any such land to the sheriff or any other person answerable to Us for the issues thereof, and he commit destruction or waste, We will take an amends from him, and the land shall be committed to two lawful and discreet men of that fee, who shall be answerable for the issues to Us or to whomsoever We shall have assigned them. And if We shall give or sell the wardship of any such land to anyone, and he commit destruction or waste upon it, he shall lose the wardship, which shall be committed to two lawful and discreet men of that fee, who shall,

*Reliefs
for inheritance*

*Heir under
age*

*Rights of
wards*

in like manner, be answerable unto Us as has been aforesaid. [p. 10]

*Duties
of
guardians*

5 The guardian, so long as he shall have the custody of the land, shall keep up and maintain the houses, parks, fishponds, pools, mills, and other things pertaining thereto, out of the issues of the same, and shall restore the whole to the heir when he comes of age, stocked with ploughs and tillage, according as the season may require and the issues of the land can reasonably bear. [p. 10]

*Marriage
of heirs*

6 Heirs shall be married without loss of station, and the marriage shall be made known to the heir's nearest of kin before it be contracted. [p. 11]

*Rights of
widows*

7 A widow, after the death of her husband, shall immediately and without difficulty have her marriage portion and inheritance. She shall not give anything for her marriage portion, dower, or inheritance which she and her husband held on the day of his death, and she may remain in her husband's house for forty days after his death, within which time her dower shall be assigned to her. [p. 11]

*Marriage
of widows*

8 No widow shall be compelled to marry so long as she has a mind to live without a husband, provided, however, that she give security that she will not marry without Our assent, if she holds of Us, or that of the lord of whom she holds, if she holds of another. [p. 11]

9 Neither We nor Our bailiffs shall seize any land or rent for any debt so long as the debtor's chattels are sufficient to discharge the same; nor shall the debtor's sureties be distrained so long as the debtor is able to pay the debt. If the debtor fails to pay, not having the means to pay, then the sureties shall answer the debt, and, if they desire, they shall hold the debtor's lands and rents until they have received satisfaction of the debt which they have paid for him, unless the debtor can show that he has discharged his obligation to them. [p. 19]

*10 If anyone who has borrowed from the Jews any sum of money, great or small, dies before the debt has been paid, the heir shall pay no interest on the debt so long as he remains under age, of whomsoever he may hold. If the debt shall fall into Our hands, We will take only the principal sum named in the bond. [p. 20]

*11 And if any man dies indebted to the Jews, his wife shall have her dower and pay nothing of that debt; if the deceased leaves children under age, they shall have necessities provided for them in keeping with the estate of the deceased, and the debt shall be paid out of the residue, saving the service due to the deceased's feudal lords. So shall it be done with regard to debts owed persons other than Jews. [p. 20]

*Debtors and
sureties*

*Interest
on debts*

*Rights of
widows and
heirs as
against
creditors*

*No aids
save by
common
counsel*

*12 No scutage or aid shall be imposed in Our kingdom unless by common counsel thereof, except to ransom Our person, make Our eldest son a knight, and once to marry Our eldest daughter, and for these only a reasonable aid shall be levied. So shall it be with regard to aids from the City of London. [p. 11]

*Liberties
of London
and other
towns*

13 The City of London shall have all her ancient liberties and free customs, both by land and water. Moreover, We will and grant that all other cities, boroughs, towns, and ports shall have all their liberties and free customs. [p. 19]

*Calling of
council to
consent to
aids*

*14 For obtaining the common counsel of the kingdom concerning the assessment of aids (other than in the three cases aforesaid) or of scutage, We will cause to be summoned, severally by Our letters, the archbishops, bishops, abbots, earls, and great barons; We will also cause to be summoned, generally, by Our sheriffs and bailiffs, all those who hold lands directly of Us, to meet on a fixed day, but with at least forty days' notice, and at a fixed place. In all letters of such summons We will explain the cause thereof. The summons being thus made, the business shall proceed on the day appointed, according to the advice of those who shall be present, even though not all the persons summoned have come. [p. 11]

*15 We will not in the future grant permission to any man to levy an aid upon his free men, except to ransom his person, make his eldest son a knight, and once to marry his eldest daughter, and on each of these occasions only a reasonable aid shall be levied. [p. 11]

16 No man shall be compelled to perform more service for a knight's fee than is due therefrom. [p. 11]

17 Common Pleas shall not follow Our Court, but shall be held in some certain place. [p. 12]

18 Recognizances of novel disseisin, mort d'ancestor, and darrein presentment shall be taken only in their proper counties, and in this manner: We or, if We be absent from the realm, Our Chief Justiciary shall send two justiciaries through each county four times a year, and they, together with four knights elected out of each county by the people thereof, shall hold the said assizes in the county court, on the day and in the place where that court meets. [p. 12]

19 If the said assizes cannot be held on the day appointed, so many of the knights and freeholders as shall have been present on that day shall remain as will be sufficient for the administration of justice, according as the business to be done be greater or less. [p. 13]

*Limit on
other
lords'
aids*

*Knight's
fee*

*Justice to
be had at a
fixed place*

*Land disputes
to be tried
in their
counties*

*Conclusion
of assizes*

*Fines to be
measured by
the offense;
livelihoods
not to be
destroyed*

20 A free man shall be amerced for a small fault only according to the measure thereof, and for a great crime according to its magnitude, saving his position; and in like manner a merchant saving his trade, and a villein saving his tillage, if they should fall under Our mercy. None of these amercements shall be imposed except by the oath of honest men of the neighborhood. [p. 13]

*Same for
barons*

21 Earls and barons shall be amerced only by their peers, and only in proportion to the measure of the offense. [p. 13]

*Same for
clergymen*

22 No amercement shall be imposed upon a clerk's lay property, except after the manner of the other persons aforesaid, and without regard to the value of his ecclesiastical benefice. [p. 13]

*Obligations
to build
bridges*

23 No village or person shall be compelled to build bridges over rivers except those bound by ancient custom and law to do so. [p. 16]

*Unauthorized
persons not to
hold trials*

24 No sheriff, constable, coroners, or other of Our bailiffs shall hold pleas of Our Crown. [p. 15]

*Ceiling on
rents*

*25 All counties, hundreds, wapentakes, and tithings (except Our demesne manors) shall remain at the ancient rents, without any increase. [p. 17]

26 If anyone holding a lay fee of Us shall die, and the sheriff or Our bailiff show Our letters patent of summons touching the debt due to Us from the deceased, it shall be lawful for such sheriff or bailiff to attach and catalogue the chattels of the deceased found in the lay fee to the value of that debt, as assessed by lawful men. Nothing shall be removed therefrom until Our whole debt be paid; then the residue shall be given up to the executors to carry out the will of the deceased. If there be no debt due from him to Us, all his chattels shall remain the property of the deceased, saving to his wife and children their reasonable shares. [p. 20]

*27 If any free man shall die intestate, his chattels shall be distributed by his nearest kinfolk and friends, under supervision of the Church, saving to each creditor the debts owed him by the deceased. [p. 20]

28 No constable or other of Our bailiffs shall take corn or other chattels of any man without immediate payment, unless the seller voluntarily consents to postponement of payment. [p. 17]

29 No constable shall compel any knight to give money in lieu of castle-guard when the knight is willing to perform it in person or (if reasonable cause prevents him from performing it himself) by some other fit man. Further, if We lead or send him into military service,

*Debts owed
the Crown*

Intestacy

*Compensation
for taking
of private
property*

*Castle-
guard*

he shall be quit of castle-guard for the time he shall remain in service by Our command. [p. 17]

*No taking
of horses
without
consent* 30 No sheriff or other of Our bailiffs, or any other man, shall take the horses or carts of any free man for carriage without the owner's consent. [p. 17]

*No taking
of wood
without
consent* 31 Neither We nor Our bailiffs will take another man's wood for Our castles or for any other purpose without the owner's consent. [p. 17]

*Lands of
felons* 32 We will retain the lands of persons convicted of felony for only a year and a day, after which they shall be restored to the lords of the fees. [p. 12]

*Removal of
fishweirs* 33 All fishweirs shall be entirely removed from the Thames and Medway, and throughout England, except upon the seacoast. [p. 19]

*Writ of
praecipe* 34 The writ called "praecipe" shall not in the future issue to anyone respecting any tenement if thereby a free man may not be tried in his lord's court. [p. 16]

*Uniform
weights and
measures* 35 There shall be one measure of wine throughout Our kingdom, and one of ale, and one measure of corn, to wit, the London quarter, and one breadth of dyed cloth, russets, and haberjets, to wit, two ells within the selvages. As with measures so shall it also be with weights. [p. 19]

36 Henceforth nothing shall be given or taken for a writ of inquisition upon life or limbs, but it shall be granted gratis and not be denied. [p. 16]

*Writs upon
life or
limbs*

37 If anyone holds of Us by fee farm, socage, or burgage, and also holds land of another by knight's service, We will not by reason of that fee farm, socage, or burgage have the wardship of his heir, or the land which belongs to another man's fee; nor will We have the wardship of such fee farm, socage, or burgage unless such fee farm owe knight's service. We will not have the wardship of any man's heir, or the land which he holds of another by knight's service, by reason of any petty serjeanty which he holds of Us by service of rendering Us daggers, arrows, or the like. [p. 11]

*Crown
wardship*

38 In the future no bailiff shall upon his own unsupported accusation put any man to trial without producing credible witnesses to the truth of the accusation. [p. 16]

*No man to be put
to his trial upon
unsupported
accusation*

39 No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land. [p. 14]

*Free men
guaranteed
"law of the
land"*

40 To no one will We sell, to none will We deny or delay, right or justice. [p. 15]

*Guarantee of
equal justice*

*Free
movement for
merchants*

41 All merchants shall have safe conduct to go and come out of and into England, and to stay in and travel through England by land and water for purposes of buying and selling, free of illegal tolls, in accordance with ancient and just customs, except, in time of war, such merchants as are of a country at war with Us. If any such be found in Our dominion at the outbreak of war, they shall be attached, without injury to their persons or goods, until it be known to Us or Our Chief Justiciary how Our merchants are being treated in the country at war with Us, and if Our merchants be safe there, then theirs shall be safe with Us. [p. 19]

*Freedom to
leave and
reenter the
kingdom*

*42 In the future it shall be lawful (except for a short period in time of war, for the common benefit of the realm) for anyone to leave and return to Our kingdom safely and securely by land and water, saving his fealty to Us. Excepted are those who have been imprisoned or outlawed according to the law of the land, people of the country at war with Us, and merchants, who shall be dealt with as aforesaid. [p. 19]

Escheats

43 If anyone die holding of any escheat, such as the honor of Wallingford, Nottingham, Boulogne, Lancaster, or other escheats which are in Our hands and are baronies, his heir shall not give any relief or do any service to Us other than he would owe to the baron, if such barony had been in the hands of a baron, and We will hold the escheat in the same manner in which the baron held it. [p. 12]

44 Persons dwelling outside the forest need not in the future come before Our justiciaries of the forest in answer to a general summons unless they be impleaded or are sureties for any person or persons attached for breach of forest laws. [p. 18]

*45 We will appoint as justiciaries, constables, sheriffs, or bailiffs only such men as know the law of the land and will keep it well. [p. 16]

46 All barons who have founded abbeys, evidenced by charters of English kings or ancient tenure, shall, as is their due, have the wardship of the same when vacant. [p. 12]

47 All forests which have been created in Our time shall forthwith be disafforested. So shall it be done with regard to rivers which have been placed in fence in Our time. [p. 18]

*48 All evil customs concerning forests and warrens, foresters and warreners, sheriffs and their officers, or riverbanks and their conservators shall be immediately inquired into in each county by twelve sworn knights of such county, chosen by honest men of that county, and shall within forty days after the inquest be completely and irrevocably abolished, provided always that the matter shall have been previously brought to Our knowledge, or that of Our Chief Justiciary if We Ourselves shall not be in England. [p. 18]

Forest laws

Appointment only of those who know the law

Wardship of abbeys

Forest boundaries

Evil forest customs

Return of hostages *49 We will immediately return all hostages and charters delivered to Us by Englishmen as security for the peace or for the performance of loyal service. [p. 18]

Ouster of Poitevin favorites *50 We will entirely remove from their bailiwicks the kinsmen of Gerard de Athyes, so that henceforth they shall hold no bailiwick in England: Engelard de Cigogné, Peter, Guy, and Andrew de Chanceaux, Guy de Cigogné, Geoffrey de Martigny and his brothers, Philip Mark and his brothers, and Geoffrey his nephew, and all their followers. [p. 18]

Banishment of mercenaries *51 As soon as peace is restored, We will banish from Our kingdom all foreign knights, bowmen, attendants, and mercenaries, who have come with horses and arms, to the kingdom's hurt. [p. 18]

Restoration of lands and rights *52 If anyone has been disseised or deprived by Us, without the legal judgment of his peers, of lands, castles, liberties, or rights, We will immediately restore the same, and if any dispute shall arise thereupon, the matter shall be decided by judgment of the twenty-five barons mentioned below in the clause for securing the peace. With regard to all those things, however, of which any man was disseised or deprived, without the legal judgment of his peers, by King Henry Our Father or Our Brother King Richard, and which remain in Our hands or are held by others under Our warranty, We shall have respite during the term commonly allowed

to the Crusaders, except as to those matters on which a plea had arisen, or an inquisition had been taken by Our command, prior to Our taking the Cross. Immediately after Our return from Our pilgrimage, or if by chance We should remain behind from it, We will at once do full justice. [p. 18]

*53 Likewise, We shall have the same respite in rendering justice with respect to the disafforestation or retention of those forests which Henry Our Father or Richard Our Brother afforested, and to wardships of lands belonging to another's fee, which We hitherto have held by reason of the fee which some person has held of Us by knight's service, and to abbeys founded in another's fee than Our own, whereto the lord of that fee asserts his right. When We return from Our pilgrimage, or if We remain behind from it, We will forthwith do full justice to the complainants in these matters. [p. 18]

*Respite
during
Crusade*

54 No one shall be arrested or imprisoned upon a woman's appeal for the death of any person other than her husband. [p. 16]

*Women's
appeals*

*55 All fines unjustly and unlawfully given to Us, and all amercements levied unjustly and against the law of the land, shall be entirely remitted or the matter settled by judgment of the twenty-five barons of whom mention is made below in the clause for securing the peace, or the majority of them, together with the

*Remission
of unlawful
fines*

aforesaid Stephen, Archbishop of Canterbury, if he himself can be present, and any others whom he may wish to bring with him for the purpose; if he cannot be present, the business shall nevertheless proceed without him. If any one or more of the said twenty-five barons be interested in a suit of this kind, he or they shall be set aside, as to this particular judgment, and another or others, elected and sworn by the rest of the said barons on this occasion only, be substituted in their stead. [p. 18]

*Restoration
of Welsh
rights*

56 If We have disseised or deprived the Welsh of lands, liberties, or other things, without legal judgment of their peers, in England or Wales, they shall immediately be restored to them, and if a dispute shall arise thereon, the question shall be determined in the Marches by judgment of their peers according to the law of England as to English tenements, the law of Wales as to Welsh tenements, and the law of the Marches as to tenements in the Marches. The same shall the Welsh do to Us and Ours. [p. 18]

*Respite
during
Crusade*

*57 But with regard to all those things of which any Welshman was disseised or deprived, without legal judgment of his peers, by King Henry Our Father or Our Brother King Richard, and which We hold in Our hands or others hold under Our warranty, We shall have respite during the term commonly allowed to the Crusaders, except as to those matters whereon a suit had arisen or an inquisition had been

taken by Our command prior to Our taking the Cross. Immediately after Our return from Our pilgrimage, or if by chance We should remain behind from it, We will do full justice according to the laws of the Welsh and the aforesaid regions. [p. 18]

*58 We will immediately return the son of Llywelyn, all the Welsh hostages, and the charters which were delivered to Us as security for the peace. [p. 18]

*59 With regard to the return of the sisters and hostages of Alexander, King of the Scots, and of his liberties and rights, We will do the same as We would with regard to Our other barons of England, unless it should appear by the charters which We hold of William his father, late King of the Scots, that it ought to be otherwise; this shall be determined by judgment of his peers in Our court. [p. 18]

60 All the customs and liberties aforesaid, which We have granted to be enjoyed, as far as in Us lies, by Our people throughout Our kingdom, let all Our subjects, whether clerks or laymen, observe, as far as in them lies, toward their dependents. [p. 22]

*61 Whereas We, for the honor of God and the amendment of Our realm, and in order the better to allay the discord arisen between Us and Our barons, have granted all these things aforesaid, We, willing that they be forever enjoyed wholly and in lasting strength, do give

*Return of
Welsh
hostages*

*Rights of
Alexander,
King of
Scots*

*Liberties
to be
granted to
lesser
tenants*

*Committee of
twenty-five barons
to enforce
Charter*

and grant to Our subjects the following security, to wit, that the barons shall elect any twenty-five barons of the kingdom at will, who shall, with their utmost power, keep, hold, and cause to be kept the peace and liberties which We have granted unto them and by this Our present Charter have confirmed, so that if We, Our Justiciary, bailiffs, or any of Our ministers offend in any respect against any man, or shall transgress any of these articles of peace or security, and the offense be brought before four of the said twenty-five barons, those four barons shall come before Us, or Our Chief Justiciary if We are out of the kingdom, declaring the offense, and shall demand speedy amends for the same. If We or, in case of Our being out of the kingdom, Our Chief Justiciary fail to afford redress within the space of forty days from the time the case was brought before Us or, in the event of Our having been out of the kingdom, Our Chief Justiciary, the aforesaid four barons shall refer the matter to the rest of the twenty-five barons, who, together with the commonalty of the whole country, shall distrain and distress Us to the utmost of their power, to wit, by capture of Our castles, lands, and possessions and by all other possible means, until compensation be made according to their decision, saving Our person and that of Our Queen and children; as soon as redress has been had, they shall return to their former allegiance. Anyone in the kingdom may take oath that, for the accomplishment of all the afore-

said matters, he will obey the orders of the said twenty-five barons and distress Us to the utmost of his power; and We give public and free leave to everyone wishing to take such oath to do so, and to none will we deny the same. Moreover, all such of Our subjects who shall not of their own free will and accord agree to swear to the said twenty-five barons, to distrain and distress Us together with them, We will compel to do so by Our command in the manner aforesaid. If any one of the twenty-five barons shall die or leave the country or be in any way hindered from executing the said office, the rest of the said twenty-five barons shall choose another in his stead, at their discretion, who shall be sworn in like manner as the others. In all cases which are referred to the said twenty-five barons to execute, and in which a difference shall arise among them, supposing them all to be present, or in which not all who have been summoned are willing or able to appear, the verdict of the majority shall be considered as firm and binding as if the whole number should have been of one mind. The aforesaid twenty-five shall swear to keep faithfully all the aforesaid articles and, to the best of their power, to cause them to be kept by others. We will not procure, either by Ourselves or any other, anything from any man whereby any of these concessions or liberties may be revoked or abated. If any such procurement be made, let it be null and void; it shall never be made use of either by Us or by any other. [p. 20]

*Pardon of
ill-will and
trespasses*

*62 We have also wholly remitted and pardoned all ill-will, wrath, and malice which has arisen between Us and Our subjects, both clergy and laymen, during the disputes, to and with all men. Moreover, We have fully remitted and, as far as in Us lies, wholly pardoned to and with all, clergy and laymen, all trespasses made in consequence of the said disputes from Easter in the sixteenth year of Our reign till the restoration of peace. Over and above this, We have caused to be made in their behalf letters patent by testimony of Stephen, Archbishop of Canterbury, Henry, Archbishop of Dublin, the Bishops above-mentioned, and Master Pandulph, for the security and concessions aforesaid. [p. 18]

*Oath to
observe rights
of Church
and people*

*63 Wherefore We will, and firmly charge, that the English Church shall be free, and that all men in Our kingdom shall have and hold all the aforesaid liberties, rights, and concessions, well and peaceably, freely, quietly, fully, and wholly, to them and their heirs, of Us and Our heirs, in all things and places forever, as is aforesaid. It is moreover sworn, as well on Our part as on the part of the barons, that all these matters aforesaid shall be kept in good faith and without deceit. Witness the above-named and many others. Given by Our hand in the meadow which is called Runnymede, between Windsor and Staines, on the fifteenth day of June in the seventeenth year of Our reign. [pp. 20, 21]